

CHAPTER 12: CABLE TELEVISION

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§ 12-1-1 TITLE.

This article shall be entitled the City of Sedona Cable Communications Code.
(Ord. 91-20, passed - -)

§ 12-2-1 PURPOSE.

It is the purpose of this article to provide for the regulation and control of cable television systems operating within the city by the Council, in the public interest; to authorize the Council to grant 1 or more non-exclusive licenses to operate cable communications systems; to provide for the use of city streets, public utility easements, public rights-of-way and public places by licensees and compensation to the city for use of same; and to require that the provisions of this article be applicable to all licenses granted by the Council. It is the further purpose and intent of this article to facilitate the provision of high quality cable television service to the citizens of the city while minimizing disruptions of the public domain for system installation and maintenance.
(Ord. 91-20, passed - -)

§ 12-3-1 DEFINITIONS.

For purposes of this article, the following words, abbreviations, and their derivations shall have the meanings given herein. Words not defined are given the meaning in § 602 of the Cable Act, being 47 U.S.C. § 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words ***MUST*** or ***SHALL*** are mandatory and the word ***MAY*** is permissive.

2-WAY CAPABILITY. The incorporation in a cable system of all appropriate design and engineering characteristics so that 2-way transmission, including addressability, over the system can be implemented with a minimum of expense.

APPLICANT. Any person that applies for a license.

APPLICATION. A proposal to construct and operate a cable system within the city, transfer a license, renew a license or modify a license. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

BASIC CABLE SERVICE or ***BASIC SERVICE.*** Any service tier which includes the retransmission of local television broadcast signals.

CABLE ACT. The Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 *et seq.*

CABLECASTING. A non-broadcast signal that originates within the facilities of the cable communications system.

CABLE SERVICE.

1. One-way transmission to subscribers of:
 - a. Video programming; or
 - b. Other programming service; and
2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE TELEVISION SYSTEM or ***CABLE SYSTEM.*** A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city. Such term does not include:

1. A facility that serves only to retransmit the television signals of 1 or more television broadcast stations;
2. A facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control or management, unless such facility uses or crosses (above or through) any public right-of-way;

3. A facility of a common carrier that is subject, in whole or part, to the provisions of Title II of the Communications Act of 1934, being 47 U.S.C. §§ 201 *et seq.*, except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers; or

4. Any facility of any electric utility used solely for operating its electric utility systems. Furthermore, if there is a connection of any such exempt system to a licensed system such exemption shall cease.

CHANGE OF SERVICE. All requests by existing subscribers for modification to their cable service, such as additions or deletions of premium services, additional outlets, remote controls FM service, and the like. Such term shall not include initial installation of basic cable service, total disconnection of basic cable service or service calls.

CHANNEL. A portion of the electromagnetic frequency spectrum which is used in a cable system and is capable of delivering a television channel.

CITY. The City of Sedona, a municipal corporation of the State of Arizona, in its present boundaries and its future boundaries, as increased or decreased by law.

CITY MANAGER. The City Manager of Sedona, Arizona, or his or her designee, as will be communicated to the licensee in writing, if and when such designation occurs.

COMPLAINT. A subscriber or citizen issue, presented in verbal or written form to the licensee or the city, relating to any aspect of the licensee's performance under this article.

CONTROL OF LICENSEE or APPLICANT. The legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership and the general partner retains full power.

CONVERTER. An electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

COUNCIL. The Council of the City of Sedona, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

DENSITY. The number of potential subscriber households per mile of cable system. Dwelling units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk and feeder cable lines.

DWELLING UNIT. Any separate and distinct structure or part thereof which exists in finished form, occupied or capable of year-round occupation, and serves as a residence to 1 or more persons. This definition includes but is not limited to: all single-family homes, each apartment unit, each condominium unit, patio homes, guest quarters and similar type structures.

FCC. The Federal Communications Commission or successor agency.

GROSS ANNUAL REVENUES or GROSS REVENUES.

1. All cash, credits, property of any kind or nature or other consideration, received directly or indirectly by a licensee, arising from or attributable to the licensee's operation of its cable television system within the city, including, but not limited to:

- a. Revenue from all charges for services provided to subscribers;
- b. Revenue for all charges for the insertion of commercial advertising upon the cable system;
- c. Revenue from all charges for the leased use of studios;
- d. Revenue from all charges for installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable service;
- e. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users;
- f. Revenue from the rental of equipment necessary for subscribers with hearing impairment to receive cable service; and
- g. Any other income derived from the cable system.

2. This sum shall be the basis for computing the fee imposed pursuant to § 12-1-9. This sum shall not include:

- a. The value of complimentary services provided to licensee's employees or as required by this article or the license agreement;
- b. The value of complimentary services provided by a licensee for promotional purposes or to non-profit or humanitarian organizations;
- c. Uncollected bad debts from all revenue sources; and
- d. Taxes or license fees imposed upon a licensee's subscribers and collected by a licensee for the agency imposing the tax or fees.

INTERCONNECT or INTERCONNECT OF FACILITIES. The connection of 1 or more channels of licensee's system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

LEASED CHANNEL or LEASED ACCESS CHANNEL. Any channel designated in accordance with § 612 of the Cable Act, being 47 U.S.C. § 532, for commercial use by persons unaffiliated with the licensee.

LICENSE. The non-exclusive right and authority, granted by the Council, as described in this article, to construct, maintain and operate a cable television system through use of the public streets or public places in the city. This term does not include any license or permit that may be required by this article or other laws, ordinances or regulations of the Council for the privilege of transacting and carrying on a business within the city or for disturbing the surface of any street or public thoroughfare.

LICENSEE. The person granted a license agreement by the council and any lawful successor, transferee or assignee of said person.

LICENSE AGREEMENT. A contract entered into in accordance with the provisions of this article between the Council and a licensee that sets forth the terms and conditions under which the license will be exercised.

MALFUNCTION. An equipment or facility failure that results in the loss of a viewable signal on 1 or more channels. A “major malfunction” has occurred when 5 or more channels are affected.

OUTAGE. An equipment or facility failure that results in a total loss of signal on all cable channels affecting 3 or more subscribers in a quarter section within a 120-minute period.

OVERBUILD. A cable system constructed to serve subscribers currently served by an existing cable system, including those parts of an existing system that will be constructed within 6 months pursuant to plans filed with the Council.

PEG ACCESS CHANNEL or PEG CHANNEL. Any channel set aside for public use, educational use or governmental use without a charge by the licensee for channel usage.

PERSON. Extend and be applied to firms, corporations or organizations, as well as to individuals, unless plainly inapplicable.

PROPERTY OF LICENSEE. All property owned, installed or used within the city by a licensee in the conduct of a cable television system business.

SCHOOL. Any public educational institution, which is accredited by a nationally recognized institution, including primary and secondary schools, colleges and universities.

SERVICE CALL. Result when service problems occur relating to:

1. Fewer than 3 complaints regarding total loss of signal on all channels within the same quarter section within 120 minutes.
2. A degraded signal or picture on 1 or more channels.
3. Property damage by licensee employees or authorized contractors.

STANDARD DROP. That cable connection which requires no more than a 200- foot drop measured from the nearest point of subscriber's home or place of business to the nearest active tap on the cable system, involving only 1 outlet and standard materials, and does not involve a wallfish. In addition, a standard drop shall exclude custom installation work including specific subscriber requested work that requires non-standard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work.

STREET. The surface, the air space above the surface, and the area below the surface of any public street, road, highway, path, sidewalk, alley, court, easement or other public right-of-way or public place now or hereafter held by the city, County of Yavapai, County of Coconino or the state for the purpose of public travel or public utilities.

SUBSCRIBER. Any individual or entity legally receiving, for any purpose, cable services of the licensee's cable television system including, but not limited to, the basic service, redistribution of television broadcast signals, radio signals, licensee's original cablecasting, local government, education and public access channels and other services such as leased channels, data and facsimile distribution, premium and pay-per-view channels, and police, fire and similar public service communication.
(Ord. 91-20, passed - -)

§ 12-4-1 AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE LICENSE.

A. Pursuant to A.R.S. § 9-506, as amended, the Council has the authority to issue non-exclusive licenses to construct, install, maintain and operate cable communication systems within the city, and to regulate those cable operations. The Council's authority is also based in common law pursuant to the city's ownership of the fee simple title to the streets of the city as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use.

B. No provision of this article shall be deemed or construed to require the granting of a license.

C. No person shall construct, install or maintain a cable system within any street in the city, or within any other public property of the city, unless a license agreement authorizing such use of the streets or property is in full force and effect.

D. Any person providing or maintaining a cable system in the city pursuant to a license granted by Yavapai or Coconino County, Arizona, prior to the incorporation of the city, may continue to provide and maintain such system until such time as the city has granted its first license. If the person providing or maintaining a system does not receive (one of) the first city licenses, then the person shall have 120 days from the effective date of the first licenses to provide for the abandonment or removal of the system.

E. Any license issued by the Council shall be non-exclusive, and the Council specifically reserves the right to grant such additional licenses for cable systems under such similar terms and conditions as the Council deems appropriate.
(Ord. 91-20, passed - -)

§ 12-5-1 APPLICATION PROCEDURES.

A. Any person desiring to construct, install, maintain or operate a cable communication system within the city shall submit an application to the Council. This application shall consist of executed application forms as prescribed and furnished by the city. Failure of any applicant to fully provide all information requested on the application forms will be sufficient cause for not considering the application. This application shall be filed with the City Clerk.

B. All applications filed with the City Clerk remain the property of the city. Applications for a license may be submitted on an unsolicited basis, or in response to a request for proposals (RFP) issued by the Council in accordance with the provisions of this article. Applications submitted pursuant to a request for proposals may be returned as non-responsive if they do not comply with all requirements of the request. The Council reserves the right to issue a request for proposals at any time.

C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of §§ 12-1-9 and 12-1-12 of this article, while applications for renewal must conform to §§ 12-1-9 and 12-1-11.

D. An application for modification of a license agreement must conform to § 12-1-9 of this article, and include, at a minimum, the following information:

1. The specific modification requested;
2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;
3. A statement as to whether the modification sought is pursuant to 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the legal standards of the law; and
4. Any other information necessary for the Council to make a determination.

E. To be acceptable for filing, an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the Council, contain the information required either by this article or by any required application form, and meet the requirements of any applicable request for proposals.
(Ord. 91-20, passed - -)

§ 12-6-1 STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS.

A. All applications received that are acceptable for filing shall be placed in a public file with the City Clerk. The Council shall publish notice of each application in a newspaper of general circulation within the proposed service area once a week for 2 consecutive weeks. The notice shall indicate the following:

1. The proposed service or changes in service;
2. Proposed changes in ownership;
3. Where the application may be viewed;
4. The due date for submission of any written comments; and
5. The date and location of a public hearing on the proposed application.

B. Notice of such hearing shall be published and held in accordance with A.R.S. § 9-507(B). All interested parties shall be afforded a reasonable opportunity to be heard.

C. The Council shall give full consideration to each application. The following factors may be deemed appropriate and shall be considered:

1. The financial qualifications of the applicant and its ability to construct and operate the proposed system.
2. The need for and quality of the service proposed, including rates to subscribers, whether or not rates are to be regulated.

3. The technical, legal and character qualifications of the applicant, including applicant's willingness to abide by the limitations of this article.

4. Technical and performance adequacy of the proposed system design, plant and equipment, including any specific knowledge or experience the Council may have with the applicant.

5. Where an applicant proposes to overbuild an existing cable system, the economic and technical feasibility of multiple cable systems and the impact on the existing licensee's system and the public interest if the application were to be granted.

6. All other factors which may affect the public interest.

D. Thereafter, the Council shall make a determination whether to approve or disapprove each application, and their decision shall be final.
(Ord. 91-20, passed - -)

§ 12-7-1 LICENSE AGREEMENT.

A. Upon the approval of an application by the Council, the applicant shall negotiate and execute a license agreement within 60 days. If the Council and the grantee fail to agree on the terms of a license agreement within the 60 days of the date that the Council approved the application, the approval shall expire without further action by the Council. This time limit may be extended by the Council for good cause. The license agreement shall incorporate all terms and provisions of this article wherein a requirement is placed upon the licensee, either expressed or implied, by this article. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this article, and any amendments thereto. This agreement shall be binding upon the licensee, its successors, lessees or assignees.

B. A license agreement shall have the following characteristics:

1. It authorizes use of the public rights-of-way for installing cables, wires, lines and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cable, wires, lines or any other equipment or facilities upon property without owner consent (except for compatible easements or rights-of-way pursuant to 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.

2. It is subject to the paramount right of use of the public rights-of-way by the Council and the public for public purposes. The Council reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.

3. It is nonexclusive and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the city.

4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.

5. It constitutes a contract between the licensee and the Council once it is approved and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations and orders.

6. The term of the license agreement shall not exceed 15 years commencing on its effective date.

7. A licensee shall execute a hold harmless agreement as part of the license agreement which shall set forth the obligation of the licensee over and above the insurance requirements contained in the license and this article.

8. A licensee shall be subject to all laws, rules and regulations of the state and the United States Government.

9. Any of the provisions of this article may be amended by the Council at any time. This article and such amended provisions shall be applicable to all existing license agreements; provided, however, that this article and such amended provisions shall not be applicable to an existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor impose additional contractual burdens on the licensee.

10. All notices and communications from a licensee to the Council pursuant to this article or a license agreement shall be sent to the City Manager unless the licensee is otherwise directed.
(Ord. 91-20, passed - -)

§ 12-8-1 OPERATING REQUIREMENTS FOR CABLE COMMUNICATION SYSTEMS.

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the city. It is not the intent of this section to prevent any licensee from providing more than the required minimum to meet the standards listed below.

A. Rights of individuals, subscribers and users.

1. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, channels, studios and other services to all residents and other entities having a legitimate use of the system. A licensee shall not discriminate in terms of rates, terms of service or extension of service on the basis of age, race, creed, sex, religion, national origin or marital status, except that a licensee shall not be prohibited from periodically discounting or waiving monthly service rates or installation fees as part of any promotional or marketing campaign. Nor shall a licensee fail to extend service to any part of the city on the basis of the income of the residents.

2. A licensee shall maintain a business office open during normal business hours with listed local or toll-free telephone numbers to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the Council, the office shall be located within the city's corporate limits. When the office is closed, an answering machine, answering service or similar device, capable of receiving service complaints and inquiries, must be employed.

3. A licensee shall maintain a written or electronic log listing date of all complaints, identifying the subscriber or citizen, describing the nature of the complaint and when and what action has been taken by the licensee, if any, in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice of demand of the City Manager. A summary of such records must be retained for not less than 1 year. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure for reporting and resolving complaints.

4. A licensee shall establish procedures for the investigation and resolution of all complaints including, but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the Council upon request.
5. At the time cable service is installed, a licensee must provide each subscriber the following:
 - a. Written instruction for placing a service call, filing a complaint or requesting an adjustment, including the name, title, phone number and address of the appropriate persons at licensee's office;
 - b. The telephone number of the city office responsible for administration of the cable license;
 - c. A schedule of rates and charges for all available services;
 - d. Copies of the service contract, including disconnect and reconnect procedures and charges;and
 - e. A subscriber handbook and, upon request, any other written policies applicable for subscribers.
6. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:
 - a. If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall provide such service or equipment within 30 days of the collection of the deposit or charge or it shall refund such deposit or charge, within 5 days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.
 - b. If any subscriber or user terminates any monthly service during a period of time for which the subscriber or user has made an annual or other payment in advance, the appropriate pro-rata portion of the payment shall be refunded by the licensee.
7. The following requirements shall apply to disconnections:
 - a. There shall be no charge for total disconnection of cable service unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed 30 days from the date of the request.
 - b. If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until 30 days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper charges or fees, including the payment of any reconnection charge, the licensee shall reinstate the service within 5 working days.
8. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the Council of anticipated interruption. No prior notice shall be required for the performance of system maintenance work requiring a maximum of 1 hour between the hours of 6:00 a.m. and 12:00 a.m., and 4 hours between the hours of 12:00 a.m. and 6:00 a.m.
9. A licensee shall at all times comply with the subscriber privacy provisions of 47 U.S.C. § 551.

10. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved, except in public utility easements.

11. A licensee shall not originate or knowingly permit subliminal transmission at any time for any purpose whatsoever.

12. A licensee shall provide leased access channels as required under 47 U.S.C. § 532. In the event that the federal provisions should cease to apply, the city and a licensee shall confer, mutually agree upon and then promulgate new leased access requirements which shall apply.

13. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, 47 U.S.C. § 554, state statutes and local regulations as the same may be amended from time to time.

B. Cable system construction timetable.

1. A cable system shall be constructed in accordance with the provisions of the license agreement.

2. It is the policy of the Council to require construction of a cable system designed to serve subscribers in an area licensed by the Council as rapidly and expeditiously as possible. The licensee shall immediately, upon granting of the license agreement, diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies and others as necessary to comply with the provisions of this article and other federal, state and city laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth in this article are satisfied.

3. A cable system shall be constructed pursuant to a construction timetable specified in the license agreement.

4. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this article and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the City Manager may take whatever action the City Manager is entitled to under this article and the license agreement.

5. The licensee shall not be considered in default of the applicable construction schedule if the Council approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must fully explain the reasons for the delay in writing. The delay may be disapproved by the Council if it is not reasonably justified, would have unreasonably discriminatory results or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the Council to the contrary in writing within 45 days of the date on which the request was filed.

6. The Council may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for the delay. The City Manager shall determine the format to be used for the report and the frequency of reporting.

7. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any city construction on streets so as to avoid unnecessary inconvenience to the public.

C. Line extension policy. Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements.

1. Upon reasonable request for service by any person located within any area of the city that meets density requirements of subsection 2., a licensee shall, within 60 days, furnish the requested service to such person, unless prevented from providing the service due to factors outside licensee's control such as permit restrictions, private easement considerations, and the like. If such service has not been implemented within 90 days of the request, the Council may impose liquidated damages for each day thereafter.

2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area of the city reaching the minimum density of at least 25 dwelling units per mile of plant as measured from licensee's nearest activated trunk or feeder line, whether the existing plant is aerial or underground, except that the licensee shall not be required to install cable where another authorized licensee has already done so. Licensee shall complete line extensions to an area reaching a density of at least 5 homes within 1,056 feet of existing active cable plant, or where an area has more than 5 homes with at least 1 home per 211 street feet including the distance to existing active cable plant. Upon request, this density requirement may be modified by the Council for a specific licensee, provided the licensee demonstrates that it would be commercially impracticable to comply with the requirement. For purposes of this section, a density requirement may be considered commercially impracticable if licensee's compliance with the requirement would create a significant adverse impact on the capital costs of licensee's city cable system.

3. In new single-family subdivisions, the licensee shall prevent unnecessary damage to streets and property by installing cables or conduits underground at the same time and in the same trench as telephone, electric or similar services are installed, provided that a licensee is entitled to joint-trench privileges with such other utilities and services under the same terms and conditions as granted by the city to other service providers using the trench. Given reasonable notice, the licensee shall install underground cable or conduit in all new subdivisions of 4 or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed and activated until the new subdivision meets the criteria established for line extensions.

4. The licensee must extend and make cable television service available to any resident requesting connection within the licensee's authorized service area at the regular installation charge if the connection to the resident would require no more than a 200-foot drop line, provided subsection 2. is met.

5. With respect to requests for connection requiring a drop line in excess of 200 feet, the licensee must extend service to such residents at a one-time charge not to exceed the actual costs incurred by the licensee for the distance exceeding 200 feet.

D. *Construction and technical standards.* The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees.

1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.

2. In areas where existing facilities are not underground, a licensee shall not erect poles along any street or public way of the city except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the advance written approval of the Director of the Department of Community Development pursuant to Article 7-10 of this code.

3. All television signals transmitted on a cable system must include stereo, when available, and any closed-captioned information for the hearing impaired. Antennas, supporting structures and outside plants used

in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plants.

4. The licensee shall design and install the system so as to be capable of operating according to the technical standards and all applicable rules and regulations of the FCC or any future rule-makings or standards required by the FCC. The licensee's methods and schedules for testing the system on an ongoing basis shall be in compliance with its standard policies. A summary of any test results shall be provided by licensee for the city's review upon request by the City Manager.

5. A licensee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.

E. *Maintenance specifications.*

1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner in accordance with Article 7-15 of this code, which deals with construction and maintenance work in the public rights-of-way. The safety of the general public, the licensee's employees, the employees of the utility companies and all nearby property owners shall be a primary concern.

2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.

3. As between licensee and the city, the licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct, install or maintain the licensee's facilities on streets as well as on public or private property.

4. The licensee shall give prior written notice, as set forth later in this section, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to § 12-1-9, or other enforcement sanctions.

5. In addition, the licensee shall comply with all other city, state and federal laws and regulations which may be applicable to its operations.

6. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facility owned by the state, county, city, or the gas, electric and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within 48 hours. The licensee shall be a member of the One Call Notification Center, or comply with State Underground Law, for its service area.

7. In the event that licensee property or the facilities and equipment of an unauthorized cable communication provider have been installed in a street or other dedicated public right-of-way without complying with the requirements of this article, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of 3 months, licensee or any unauthorized cable communication provider shall, at its sole expense, on the demand of the Council remove promptly from the street all licensee or unauthorized cable communication provider property other than that which the Council may permit to be abandoned in place. Upon such removal of subject property, licensee or unauthorized cable communication provider shall promptly restore the street or other public places from which the subject property

was removed to a condition as near as possible to its prior condition. Subject property no longer in service may be left in place with the approval of and in a manner prescribed by the Council. Upon abandonment of the property in place, licensee or unauthorized cable communication provider shall deliver to the Council an instrument transferring ownership of the subject abandoned property to the city. Any cost arising from compliance with this provision shall be borne by the licensee or unauthorized cable communication provider.

F. *Use of streets.*

1. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible.

2. All transmission lines and other equipment must be installed and located to minimize interference with the rights and reasonable convenience of public and private property owners. The Council reserves the right to issue such reasonable rules and regulations concerning the installation and maintenance of cable systems in the public rights-of-way, as may be consistent with this article, state and federal law.

3. The licensee shall have at all times up-to-date route maps or an electronic database showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate city personnel. If the data is in graphic digitized format, it shall be converted to AutoCad 10.0 or higher suitable for the MS DOS System and provided to the city.

4. Suitable safety devices and practices as required by city, state and federal laws, ordinances, regulations and permits must be used during construction and maintenance of a cable system.

5. A licensee must remove, replace or modify, at its own expense, any of its facilities within any public right-of-way when required to do so by the City Manager to allow the city to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this section shall prevent licensee from seeking and obtaining reimbursement from sources other than the city.

6. On streets where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the licensee's expense. Between a street or road and subscriber's residence, the cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone are aerial, licensee may install aerial cable except where a property owner requests underground installation and agrees to bear the additional cost over aerial installation.

7. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a manner consistent with all applicable rules, regulations, resolutions or other requirements relative to construction, repair or maintenance of public rights-of-way. If, in the opinion of the City Engineer, such restoration is not satisfactorily performed within a reasonable time, the City Engineer may, after prior notice to licensee, cause the repairs to be made at the expense of the licensee. The City Engineer may inspect on-going construction and require a licensee to halt construction where the City Engineer finds the construction to be in non-compliance with the requirements of this article, the license agreement or a permit.

8. Prior to commencement of underground construction a licensee must:

- a. Have received a permit from the City Engineer for construction on public property or rights-of-way; and
- b. Have requested and received clearance from utilities in the area of construction.

9. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than 7 days advance notice. The direct expense of such temporary move must be paid by the permit holder, and the licensee may require payment in advance.

G. *System services and capability.*

1. The following minimum requirements for facilities and services apply to licenses. The Council may require that a licensee exceed these minimum requirements.

a. Except as provided in the license agreement, a cable system must have a minimum capability of 54 video channels available for immediate or potential use. Two-way capability shall be designed into the system. Upon request by a licensee, this minimum channel capability may be modified by the Council for a specific licensee, provided the licensee demonstrates that it would be commercially impracticable to comply with the requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its city cable system.

b. Standard installation and basic service to public buildings may be required without charge, as set forth in the license agreement, if the buildings are within 200 feet of a licensee's system. Licensee may be required to make available 1 service outlet to a conveniently accessible point in each school, police station, fire station and city hall, or other facility or building located within the license area and used for public purposes as may be designated by the City Manager. The installation charge to each occupant, if any, will not exceed licensee's direct cost (time and material).

c. A licensee may be required to design its system to allow the Council to interrupt audio and video portions of the cable service in an emergency to deliver information to subscribers.

d. A licensee must provide standby power for the head end so as to be able to operate some channels during a power outage for a minimum of 6 hours or as otherwise provided for in the license agreement.

2. The Council may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.

3. The following requirements apply to access channels:

a. Applications for a license shall include proposals for the provision of public, educational and governmental access channel sufficient to meet community needs during the term of the license as determined by the Council. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.

b. All access channel operations must conform to the following minimum requirements:

i. Access channels shall be carried on the licensee's lowest priced service offering.

ii. A licensee shall have no editorial control over the content of the programming carried on public access channels. The Council may require a licensee or other entity to manage the access program and to establish reasonable rules for the use of access channels consistent with the requirements of this article, the license agreement and the intended purpose of such channels.

iii. The use of any public access channel and studio shall be made available to any city resident on a first come, first served nondiscriminatory basis, subject to rules and regulations specified in the license agreement.

iv. The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.

v. The use of any local government access channels shall be made available free of charge to the Council for the transmission of government-related programming.

vi. The licensee shall submit to the Council on an annual basis a plan for publicizing access programs and access use.

c. At the request of a licensee, the Council may promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.

H. *Interconnection.*

1. A licensee shall not be required to connect nor prohibited from interconnecting its cable system with other systems operated by the licensee, or with other systems in the city, in nearby cities or in the county which are operated by other licensees, where such action, as determined by the licensee, is contractually, economically and technically feasible.

2. Upon request of the Council to interconnect a licensee's system with another licensee's system, the licensee shall initiate preliminary negotiations with the other affected system in order to determine and report to the Council the contractual, economical and technical feasibility of such requested interconnection.

I. Each licensee shall carry, as part of the basic service on its cable system, the signals of the local broadcast television stations in the area as required and defined by applicable law or current or future FCC regulations.

(Ord. 91-20, passed - -)

§ 12-9-1 FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS.

A. *Application fee.* Each application for a license to be granted under the authority of this article shall be accompanied by a non-refundable filing fee in the amount specified below, by certified or cashier's check made payable to the city. Non-refundable filing fees in the following amounts are required:

1. For an initial license or renewal: \$5,000.
2. For consent to transfer or change ownership: \$2,500.
3. For license modifications:

- a. Pursuant to 47 U.S.C. § 545: \$2,500.
- b. Any other modification: up to \$2,000.

B. *License fee.*

1. In consideration of the fact that the streets of the city will be used by a licensee in the operation of its cable system within the boundaries of the city and the streets are valuable properties acquired and maintained by the city at great expense to its taxpayers, and in consideration of the costs incurred by the city in regulating and administering each cable license, the licensee shall pay to the city up to 5% of the licensee's gross annual revenue from all sources attributable to the operations of the licensee within the licensed area.
2. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than 30 days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.
3. The payment required pursuant to this section shall be in addition to any other tax or payment owed to the city pursuant to any other applicable ordinance or provision of the city code, or regulation or law of the county, state or federal government.
4. A license fee not received in full by the city within 30 days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be 5% of the amount overdue plus interest at the rate of 1.5% per month, or parts thereof.
5. Where the license fee is based on gross revenues, the licensee shall file, with each license payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within 3 months of the end of its fiscal year a statement of gross revenues for the preceding year which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made no later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be imposed for any payment necessary as a result of the yearly adjustment if the payment to correct the shortfall does not exceed 5% of the total payments made during the preceding year. In the event such payment exceeds 5%, the licensee is liable for interest and late charges for the entire amount due.
6. The City Manager shall have the right, upon reasonable notice, to inspect or audit during normal business hours a licensee's records showing the gross revenues and other relevant underlying data and information. Upon examination of such information, the City Manager has the right to recompute any and all amounts paid under a license. Any additional amounts due the city as a result of an audit shall be paid by the licensee within 30 days following written notice to the licensee by the Council, which shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the city in excess of 5% of the total paid, the licensee shall bear the total cost of the audit, and late charges and interest on the additional amount due.
7. No acceptance by the Council of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the Council may have.

C. *Performance and security bond.*

1. Within 30 days after the execution of the license agreement and prior to any construction work in the public right-of-way, the licensee shall file with the City Manager a performance and security bond, or a letter of credit in a form acceptable to the City Manager, in the city's favor in the amount of \$75,000, or as specified in the license agreement. This performance and security bond shall serve as security for the faithful and reasonable performance by the licensee of all the material provisions of the license agreement including the construction of system facilities along public rights-of-way and easements.

2. The bond shall be issued by a surety company authorized to do business in the state and shall be in a form approved by the City Manager, and contain the following endorsement:

This bond may not be canceled, or allowed to lapse, until 30 days after receipt by the Council, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

3. Unless contested by the licensee in good faith as provided for herein, in the event it is determined, after observation of the proceedings provided for herein, that a licensee has failed to comply with any of the material provisions of this article or the license agreement, then such bond may be surrendered to the city upon written demand of city as compensation for damages as set forth by the city in connection with performing or securing performance of the provisions of the license agreement by the licensee.

4. Such damages shall be recoverable jointly and severally by the city from either the principal or its surety, or both, for any and all damages and costs which the city may have suffered. These damages or costs shall include, but not be limited to, attorney's fees, costs of any action or proceeding, and the full and actual amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the city up to the full amount of such bond.

5. The rights reserved by the city with respect to the bonds required are in addition to all other rights and remedies the Council may have under this article, the license agreement or any other law.

6. Failure to maintain the performance and security bond as required shall constitute a material violation of the provisions of this article.

7. At such time as 95% of planned construction in the city is complete, as specified in license agreement, the Council may, at licensee's request, reduce or eliminate the performance and security bond requirement.

D. *Damage claims procedures.*

1. All license agreements shall contain provisions for liquidated damages, in amounts as mutually agreed upon between the city and the licensee, for any failure by the licensee to comply with various requirements of this article or the license agreement.

2. All references to notices which are required as the result of the assessment or contemplated assessment of liquidated damages by the city, or of any intention by the city to draw upon the principal and surety of the performance and security bond as a result of such assessments, and such responses thereto by the licensee, shall be by certified or registered mail, return receipt requested.

3. Prior to assessing any of the liquidated damages set forth herein, the City Manager shall give the licensee 30-days' written notice of its intention to assess such damages. In the notice, the City Manager shall set forth, at a minimum, the following:

- a. Amount to be assessed;
- b. Actual basis for such assessment;
- c. Specific license provision alleged to have been violated; and
- d. The provisions of this article or the license agreement under which the assessment is authorized.

Upon receipt of such notice, the licensee shall, during the 30-day period afforded by the notice, make a reasonable effort with the city to resolve and cure the violation. If the violation is not resolved within the period or within such other time agreeable to the city, the City Manager shall then give the licensee written confirmation within 30 days of such resolution that the city intends to cancel its claim. If, however, the licensee disputes the intended assessment or that any violation has occurred, the licensee shall appeal the assessment within 15 days from the date of receipt of the city's assessment letter in accordance with the provisions of subsection F. of this section.

4. Liquidated damages will not be assessed or imposed by the city if the City Manager finds, in his or her opinion, that a failure by the licensee resulted from conditions entirely beyond the licensee's control. Liquidated damages may be reduced or eliminated by the city if the City Manager finds that a failure by a licensee resulted, partially or entirely, from a misunderstanding of obligations or from an excusable oversight. The licensee shall bear the burden of proof in establishing the existence of such conditions or misunderstandings.

5. The imposition and collection of liquidated damages as set forth above shall not prevent the city from pursuing other remedies for other violations of either the city laws or regulations or the license agreement and for which liquidated damages have not been imposed and collected.

E. *Liquidated damages.*

1. For failure to substantially complete major planned construction or line extensions as required, unless the Council specifically approves a delay caused by the occurrence of conditions beyond the licensee's control, the licensee shall pay \$250 per day for each day, or part thereof that the deficiency continues after licensee has been given notice of such deficiency and time to respond or cure the matter according to subsection D. of this section.

2. For substantial failure or repeated failure to comply with any of the material provisions of this article or the license agreement, the licensee shall pay \$200 per day for each day, or part thereof, that such noncompliance continues after licensee has been given notice of such noncompliance and time to respond or cure the matter according to subsection D. of this section.

3. For failure to comply or remedy any other provision of this article or the license agreement, the licensee shall pay \$100 per day for each day, or part thereof, that such noncompliance continues after licensee has been given notice of such noncompliance and time to respond or cure the matter according to subsection D. of this section.

4. For failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay \$50 per day, or part thereof, that each occurrence continues after the licensee has been given notice of such violation and time to respond or cure the matter according to subsection D. of this section.

5. For failure or refusal to substantially comply with reasonable directives of the City Manager which are in accordance with city laws or regulations, the license agreement or any police powers of the city, the licensee shall pay \$50 per day for each day, or part thereof, that each occurrence continues after the licensee has been given notice of such noncompliance and time to respond or cure the matter according to subsection D. of this section.

F. *Appeals.*

1. In the event that licensee contests the City Manager's assessment of liquidated damages or fails to respond to the above-mentioned notices, within 14 days the City Manager shall convene an administrative hearing as specified in subparagraph iv. of this paragraph. Licensee may pay the fine, proceed with this hearing or waive its rights to this administrative hearing and proceed directly to the public hearing before the Council, as specified in subparagraph b. of this paragraph.

a. This shall be an administrative hearing, and licensee shall be afforded procedural due process including an opportunity to be heard and to present evidence. Within 14 days after the conclusion of such administrative hearing, the City Manager shall issue a determination. In that determination the City Manager may:

- i. Find that licensee is not in violation of this article or the license agreement;
- ii. Find that licensee is in violation of this article or the license agreement, but that the violation was with just cause and waive part or all of any penalty that might otherwise be imposed;
- iii. Find that licensee is in violation of this article or of the license agreement, take corrective action and foreclose on all or any appropriate part of the performance bond provided for elsewhere in this article; and
- iv. Find that licensee is in material violation of this article and the license agreement and recommend that the Council declare the licensee in violation and terminate the license agreement, provided the Council takes such action after a public hearing as set forth in subparagraph b. of this paragraph.

b. If a public hearing before the Council is requested by a licensee or is held pursuant to subparagraph a. of this paragraph, it shall be de novo, and it shall convene within 30 days of the request thereof. The licensee shall be afforded full due procedural process including, without limitation, an opportunity to be heard and to present evidence. The Council's decision, which shall include findings of fact and conclusions, shall be made not later than 30 days after the conclusion of the hearing. In that decision the Council may:

- i. Find that the licensee is not in violation of this article or the license agreement;
- ii. Find that the licensee is in violation of this article or the license agreement, but that the violation was with just cause and waive part or all of any penalty that might otherwise be imposed;
- iii. Find that the licensee is in violation of this article or of the license agreement, take corrective action and foreclose on all or any appropriate part of the performance bond provided for elsewhere in this article; and
- iv. Find that the licensee is in material violation of this article and the license agreement and declare the licensee in violation and revoke the license agreement pursuant to § 12-1-10.

2. In the event a licensee disputes the decision of the Council to revoke or suspend its license agreement, the licensee may submit the matter to a court of competent jurisdiction for final determination.

3. When any part of this article or a license agreement is in dispute, or when any performance of a licensee or the city is in dispute, other than a decision to revoke or suspend a license, and after the applicable procedures of § 12-1-9 or any similar procedures of a license agreement have been fully exhausted, either the city or a licensee may elect to appeal the disputed matter to a court of competent jurisdiction for a final determination. (Ord. 91-20, passed - -)

§ 12-10-1 TERMINATION – REVOCATION.

A. *Termination.* The license shall terminate, upon the expiration of the term thereof, unless renewal is successfully applied for, pursuant to § 12-1-11.

B. *Revocation.*

1. A license may be revoked or suspended by the Council on the following grounds, taking into account any ameliorating circumstances:

a. A licensee fails or repeatedly fails to comply with 1 or more material provisions of this article or the license agreement, and is unable or unwilling to resolve or cure such noncompliance;

b. A licensee makes willful false or misleading statements in any application, filing or formal documents;

c. A licensee engages in the practice of any fraud or deceit upon the city or subscribers in any application or during the term of the license agreement; and

d. A licensee is unable or unwilling to pay its debts or is judged bankrupt.

2. In the event the city determines that licensee is in material violation of this article or the license agreement, the City Manager shall make written demand to the licensee that it come into compliance with the terms, conditions or performance obligations.

3. The licensee shall have 60 days following receipt of such written demand by the city to coordinate with the City Manager and cure the violation or to effect such cure within a period of time acceptable to the City Manager. In the event the licensee fails to cure the violation, or is unable or unwilling to do so, the City Manager may recommend the revocation or suspension of the license to the Council, specifying with written particularity the reasons for such action. If, however, the licensee contests the action of the City Manager or disputes that a violation has in fact occurred, the licensee shall have 30 days from the date of receipt of the City Manager's original written demand for compliance to provide written notice to the city of such dispute.

4. In the event the City Manager recommends to the Council that the license be revoked or suspended, a copy of such recommendation shall be served on the licensee by certified or registered mail, return receipt requested, at the same time that the recommendation is forwarded to the Council. The licensee shall be given at least 30-days' advance written notice of the date scheduled for a public hearing before the Council to consider the revocation or suspension recommendation. At such hearing the licensee shall be given an opportunity to present evidence, call witnesses and make argument.

5. During the public hearing, the Council shall consider the recommendation of the City Manager, the response of the licensee and the responses from any other interested persons, and shall determine whether a violation has occurred and, if so, whether such failure warrants the revocation or suspension of the license, or some lesser appropriate penalty, in accordance with the provisions herein described.

6. If the Council finds that a violation did not occur, the matter shall be ended. If, however, the Council finds that the violation by the licensee was partially or entirely with just cause, the result of a misunderstanding or through an excusable oversight, the Council may direct the licensee to comply within a reasonable time and manner according to such terms and conditions as are reasonable.

7. If the Council finds that the licensee has violated 1 or more material provision of this article or the license agreement, or determines that 1 or more of the conditions in paragraph 1., subparagraphs b., c. or d. of this subsection exists regarding the license, the Council may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.

C. *System disposal.* In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the city may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found, pursuant to the provisions of A.R.S. § 9-509.

D. *Continuity of service.* Licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the city revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed 120 days from the occurrence of any of the above events. Revenues accrued during that period of time shall be received by the operator. During such time, the cable system shall be operated under terms and conditions consistent with the most recent license agreement and this article.
(Ord. 91-20, passed - -)

§ 12-11-1 RENEWAL.

A. If a licensee decides to initiate a formal license renewal process in accordance with 47 U.S.C. § 546, it must notify the council within 30-36 months prior to the license expiration date.

B. In considering a renewal application, the council must consider whether:

1. The licensee has substantially complied with the material terms of the existing license and applicable law;

2. The quality of licensee's service, including signal quality, customer service complaint resolutions and billing practices (without regard to mix, quality or level of cable services), has been reasonable in light of community needs;

3. The licensee has the financial, legal and technical ability to provide the services, facilities and equipment set forth in its renewal proposal; and

4. The licensee renewal proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

C. If the Council's assessment is that the license should not be renewed, the Council may commence an administrative hearing in accordance with 47 U.S.C. § 546.

D. The provisions of 47 U.S.C. §§(a) - (g) notwithstanding, a licensee may submit an application for renewal in accordance with §(h), 47 U.S.C. § (h), which affords a cable operator the opportunity to submit a proposal for the renewal of a license at any time. The Council may, after adequate public notice and comment, grant or deny such proposal.

E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee.

(Ord. 91-20, passed - -)

§ 12-12-1 TRANSFERS AND CHANGE OF CONTROL.

A. A licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than 49% of the cumulative ownership of the system without prior written authorization from the Council. For the purposes of this section, a merger or consolidation shall be deemed a transfer or assignment. Nothing in this section shall be deemed to prohibit a pledge or hypothecation, or mortgage or similar instrument transferring conditional ownership of the system's assets to a lender or creditor in the ordinary course of business, unless such interests shall exceed 75% of the original cost or the fair market value, whichever is higher.

B. A licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of the license agreement without prior written authorization from the Council. For the purposes of this section, a merger or consolidation shall be deemed a transfer or assignment.

C. In no event shall any transfer, assignment, exchange or release of the license agreement by a licensee be approved by the Council without the transferee accepting the terms and conditions of the license agreement, and any pending obligations or violations of the current licensee, by written notice to the city. This written notice of acceptance shall be received no less than 30 days prior to the proposed approval of the Council.

(Ord. 91-20, passed - -)

§ 12-13-1 INDEMNITY-INSURANCE.

A. The licensee shall, at its sole expense, fully indemnify, defend and hold harmless the city and, in their official capacity, its officials, boards, commissions, agents and employees thereof, from and against any and all claims, suits and actions, liability and judgment or damages or otherwise:

1. For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically destroyed, in any way arising out of or through, or alleged to arise out of or through, the acts or omission of a licensee or its officers, agents or employees, or to which the licensee's officers', agents' or employees' acts or omissions in any way contribute;

2. Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation in connection with a licensee's operation of the system in the city; and

3. Arising out of or alleged to arise out of the licensee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, the state or any local agency applicable to the licensee in its business.

B. The city and licensee shall cooperate in the licensee's defense of any litigation. However, nothing herein shall be deemed to prevent the city, so indemnified and held harmless herein, from participating in the defense of any litigation by their own counsel at their sole expense. The city shall give written notice to a licensee of such action. Such participation shall not under any circumstances relieve the licensee from its duty of defending against liability or of paying any judgment entered against such party.

C. In the event that a licensee does indemnify, defend and hold harmless the city as provided for in this section or in the license agreement, then the licensee's liability and obligations shall be limited to the actual amount of any damages finally agreed upon by the licensee and the city or by a court of competent jurisdiction, together with reasonable expenses actually arising out of the construction, maintenance or operation of the licensee's system to which the city has been made a party.

D. The licensee, within 30 days after written notice of the granting of a license, shall provide the city with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the state, insuring with respect to the installation, construction, operation and maintenance of the system as follows:

1. Comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. Specific amounts shall be described in the license agreement, but at no time shall this insurance be written in amounts less than the following:

a. Comprehensive general liability: \$500,000 combined single limit, bodily injury and property damage;

b. Comprehensive automobile liability: \$500,000 combined single limit, bodily injury and property damage; and

c. Excess umbrella liability, covering all the above mentioned hazards, in the minimum amount of \$1,000,000.

2. Workers' compensation coverage as required by the laws and regulations of the state.

3. All insurance policies required herein shall include the city as a named insured party.

4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein. At the time of acceptance of the license agreement, licensee shall submit to the city a certificate of insurance, in a form approved by the City Manager, listing city as "additional insured" and confirming that a satisfactory policy is in effect. This policy may be renewed on its anniversary throughout the term of the license agreement. Any

cancellations or modifications of coverage shall require 30-days' advance written notice to both the city and the licensee by certified or registered mail, return receipt requested.

E. Some or all of the provisions of subsection D. of this section may, in the discretion of the city, be satisfied by proof of self insurance.

(Ord. 91-20, passed - -)

§ 12-14-1 ADMINISTRATION.

A. *Inspection of records.* During the term of the license agreement, the Council reserves the right during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this article. A licensee shall make all reasonable efforts to maintain and provide upon request, accounting, financial data and service records specific to the city licensed area to facilitate timely and accurate analysis.

B. *Licensee rules and regulations.* Upon request of the City Manager, copies of rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be provided to the City Manager.

C. *City Manager.* The City Manager or his or her designee shall have responsibility for the day-to-day administration of cable communication operations within the city as governed by this article and the applicable license agreements. The City Manager shall be empowered to take all administrative actions on behalf of the Council except those actions which are specifically reserved to the Council or another city office or officer.

(Ord. 91-20, passed - -)

§ 12-15-1 GENERAL PROVISIONS.

A. *Non-discrimination.* Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the city. Licensee shall comply at all times with all applicable federal, state and city laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.

B. *Laws and codes.* Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.

C. *Cumulative rights and remedies.* All rights and remedies of the City Manager and the Council in this article are cumulative and may be exercised singly or cumulatively at the discretion of the City Manager or the Council.

(Ord. 91-20, passed - -)

§ 12-16-1 RIGHTS RESERVED TO THE CITY COUNCIL.

Without limitation upon the rights which the Council may otherwise have, subject to the provisions of § 12-1-7, subsection B., paragraph 9., the Council does hereby expressly reserve the right to amend any section or provision of this article for any reason determined to be desirable by the Council including, but not limited to:

A. New developments in the state of technology of cable communications systems.

B. Any changes in federal or state laws, rules or regulations.

C. The city expressly reserves the right to regulate a licensee's rates and charges to the extent permitted by law at any time it deems it to be desirable or in the public interest. If the city decides to exercise any such authority it may have, it shall develop regulations which govern the procedure pursuant to which a licensee may seek authority for rate increases.

(Ord. 91-20, passed - -)